

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SIRA CRUZ,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
NATIONAL STEEL AND  
SHIPBUILDING COMPANY, and  
PETERSON INDUSTRIAL  
SCAFFOLDING, INC.,

Defendants.

Case No.: 14cv2956-LAB (DHB)

**ORDER REGARDING JOINT  
MOTION FOR DETERMINATION  
OF DISCOVERY DISPUTE**

**[ECF No. 45]**

On January 26, 2016, Plaintiff and Defendant National Steel and Shipbuilding Company (“NASSCO”) filed a Joint Motion for Determination of Discovery Dispute.<sup>1</sup>

---

<sup>1</sup> The Court notes that Plaintiff’s counsel refused to provide Plaintiff’s portion of the Joint Motion to NASSCO’s counsel so that NASSCO could meaningfully prepare an opposition. (ECF No. 45-3 at ¶2.) Plaintiff’s counsel’s conduct in this Court’s view is at best, inappropriate, and at worst, verges on violating the Local Rules of Professionalism, which provide counsel must not “serve motions and pleadings on opposing parties or counsel at a time or in a manner that will unfairly limit their opportunity to respond.” CivLR 83.4(a)(2)(e). This Court’s Chambers Rules should not have needed to specify that NASSCO be given an opportunity to view Plaintiff’s portion of the motion in advance of preparing its opposition, as common sense and professional courtesy should have made this obvious. Nevertheless, the Court has amended its Chambers Rules to make clear that “the party initiating a joint motion to resolve a discovery dispute must provide opposing counsel with a complete draft of the joint motion and any exhibits or

(ECF No. 45.) Having considered the parties' submissions and supporting exhibits, the Court hereby **DENIES** Plaintiff's motion to compel, as outlined below.

### I. BACKGROUND

Plaintiff commenced this action on December 16, 2014, by filing a Complaint alleging that on or about February 20, 2013, she was injured while working as a tank-tester aboard the Navy vessel, USS MAKIN ISLAND, during ship repair operations at the dock in San Diego. (ECF No. 1.) Plaintiff alleges her injuries were, at least partially, due to NASSCO's negligence in failing to cover an exposed hole in the deck at the bottom of a vertical ladder leading into one of the ship's tanks. Following the accident, NASSCO employees conducted an investigation and prepared a number of reports. (*See* ECF No. 45-3 at ¶ 4.)

On June 23, 2015, Plaintiff propounded her first set of Request for Production of Documents on NASSCO. (ECF No. 45-3 at ¶ 5.) In Request for Production No. 5, Plaintiff demanded "All documents pertaining to all self-critical analyses of subject accident." (ECF No. 45-4 at 65.)

NASSCO responded to the document requests on July 27, 2015. (ECF No. 45-4 at 60-71.) NASSCO objected to Request No. 5, stating the requested documents were protected by the attorney-client privilege and work product doctrine. (*Id.* at 65.)

Plaintiff waited approximately two and a half months before initiating the meet and confer process regarding the document requests. On October 13, 2015, Plaintiff sent NASSCO a letter challenging NASSCO's assertion of the attorney-client and work product privilege. (ECF No. 45-5 at 74-75.)

Thereafter, on November 4, 2015, NASSCO produced certain documents as well as a privilege log. (ECF No. 45-3 at ¶ 8; 45-4 at 77-80.) The privilege log indicated that

---

supporting declarations **at least** five (5) business days prior to the anticipated filing date." Judge Bartick's Civil Chambers Rules IV(C)(3). Plaintiff's counsel is directed to review the revised Chambers Rules, which are posted on the Court's website.

1 NASSCO had withheld the following two documents on the basis of privilege: (1)“Email  
2 Correspondence with attached Draft Critique Report;” and (2) “Final Critique Report.”  
3 (ECF No. 45-4 at 80.)

4 On November 10, 2015, Plaintiff propounded a second set of Request for Production  
5 of Documents. (ECF No. 45-3 at ¶ 9.) In Request for Production No. 15, Plaintiff requested  
6 “All post-accident Critique Reports prepared by you concerning plaintiff Sira Cruz’s  
7 February 20, 2013 accident aboard the USS MAKIN ISLAND which is the subject of this  
8 action.” (ECF No. 45-5 at 86.)

9 NASSCO responded to the second set of document requests on December 18, 2015  
10 (served on December 22, 2015). (ECF No. 45-3 at ¶ 9.) NASSCO objected to Request  
11 No. 15 on grounds of attorney-client privilege and work product protection. (ECF No. 45-  
12 4 at 86.) NASSCO further objected that Request No. 15 was “duplicative of prior requests  
13 for production of documents, including but not limited to Request for Production No. 5.”  
14 (*Id.*)

15 Following further unsuccessful meet and confer efforts, the parties filed the instant  
16 joint motion. (ECF No. 45.) Plaintiff moves to compel NASSCO to produce further  
17 documents in response to Request No. 15, and specifically asks the Court to compel  
18 NASSCO to produce the “Email Correspondence with attached Draft Critique Report” and  
19 “Final Critique Report.”<sup>2</sup> NASSCO argues the motion is untimely, and that the requested  
20 documents are protected from disclosure by the attorney-client privilege and work product  
21 doctrine.

## 22 II. ANALYSIS

23 Pursuant to this Court’s Chambers Rules, all discovery motions must be filed “within  
24 forty-five (45) days of the date upon which the event giving rise to the dispute occurred.”  
25 Judge Bartick’s Civil Chambers Rules IV. For written discovery, the event giving rise to  
26

---

27 <sup>2</sup> NASSCO indicates that the first document listed on the privilege log was erroneously included, as it  
28 does not refer to Plaintiff’s accident, or any accident. Therefore, NASSCO states it will provide  
Plaintiff with an updated privilege log removing the document. *See* ECF No. 45-3 at ¶ 11.

1 the dispute is the date of the service of the initial response. *Id.* Plaintiff argues the event  
2 that triggered the time for filing the joint discovery motion was NASSCO's response to  
3 Request No. 15. The Court disagrees.

4 Request for Production No. 15 is substantially similar to Request for Production No.  
5 5. In Request No. 5, Plaintiff broadly asked for all documents regarding "self-critical  
6 analyses." (ECF No. 45-4 at 65.) Then, months after the deadline to move to compel had  
7 expired with regard to Request No. 5, Plaintiff propounded Request No. 15, which  
8 requested a specific subset of the documents sought by Request No. 5. Indeed, in Request  
9 No. 15, Plaintiff seeks the exact documents that NASSCO indicated were responsive to  
10 Request No. 5, but withheld due to privilege. (*Compare* ECF No. 45-4 at 80 (Privilege  
11 Log indicating "Draft Critique Report" and "Final Critique Report" were being withheld)  
12 with ECF No. 45-5 at 86 (Request No. 15 requesting "Critique Reports").)

13 Under Federal Rule of Civil Procedure 26(b)(2)(C), the Court must limit discovery  
14 that is "unreasonably cumulative or duplicative." Fed.R.Civ.P. 26(b)(2)(C). Moreover,  
15 Courts in this district routinely reject attempts to end-run around discovery deadlines. *See*  
16 *Bird v. PSC Holdings I, LLC*, 2013 WL 1120659 (S.D. Cal. Mar. 18, 2013) (stating "any  
17 discovery demands which are substantially similar to previous demands will not re-start  
18 the clock for filing a discovery motion, and may be grounds for a protective order.");  
19 *ViaSat, Inc. v. Space Systems/Loral Inc.*, 2013 WL 3467413 (S.D. Cal. July 10, 2013) ("The  
20 Court is not inclined to indicate to these parties, or any parties, that they will be allowed to  
21 do an end run around discovery deadlines that were missed through a party's own lack of  
22 due diligence. The consequences for failing to meet Court deadlines are undermined if the  
23 neglectful party is allowed to seek the same information through a different discovery  
24 vehicle.").

25 Here, the Court finds the event giving rise to the dispute was the date NASSCO  
26 responded to Request No. 5, which was July 27, 2015. (ECF No. 45-4 at 60-71.) Therefore,  
27 the deadline for this discovery motion to be filed was September 9, 2015. Accordingly,  
28

1 Plaintiff's motion to compel is untimely.<sup>3</sup> The Court rejects Plaintiff's attempt to revive  
2 the filing deadline by propounding Request No. 15.

3 **III. CONCLUSION**

4 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's motion to  
5 compel further response to Request for Production No. 15 is **DENIED**.

6 IT IS SO ORDERED.

7 Dated: February 24, 2016

8 

9 Hon. David H. Bartick  
10 United States Magistrate Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

26  
27 <sup>3</sup> Even assuming the 45-day period started to run on November 4, 2015, when NASSCO produced the  
28 privilege log that specifically identified the Final Critique Report, Plaintiff's motion is still untimely by  
more than a month.